



Order F25-55

PROVINCIAL HEALTH SERVICES AUTHORITY

Carol Pakkala
Adjudicator

July 15, 2025

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Summary: An applicant requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the medical records of a deceased person. The Provincial Health Services Authority (PHSA) determined that the applicant had not made the request on behalf of the deceased under s. 5(1)(b) of FIPPA and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). PHSA also refused to disclose the requested records pursuant to s. 22 of FIPPA. The adjudicator found that the applicant was acting on behalf of the deceased and therefore s. 22(1) did not require PHSA to withhold the deceased's personal information. The adjudicator also found that s. 22(4)(e) applied to the personal information of the third parties other than the deceased. The adjudicator ordered PHSA to disclose the information in dispute to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 5(1)(b), 22(1), 22(4); *Freedom of Information and Protection of Privacy Act Regulation*, BC Reg 155/2012, ss. 5, 5(1)(a), 5(2)(a); and *Interpretation Act*, RSBC 1996, c. 238, s. 29.

Introduction

[1] This inquiry concerns a request by the executor of a deceased person's estate for access to the deceased's medical records. The applicant requested the records from the BC Cancer Agency (BC Cancer) which is operated by the Provincial Health Services Authority (PHSA).

[2] PHSA refused to disclose the deceased's medical records to the applicant. PHSA said the applicant did not make his request on behalf of the deceased under s. 5(1)(b) (request on behalf of another individual) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)¹ and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). Therefore, PHSA found it was required to withhold the records under s. 22(1)

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

because disclosing them would be an unreasonable invasion of the deceased's personal privacy.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision. The OIPC's investigation and mediation process did not resolve the matter, and it proceeded to this inquiry. Both parties provided written submissions.

Preliminary matter, other access requests

[4] The applicant says he filed two access requests for the deceased's medical records, one with the Island Health Authority (Island Health), and the other with BC Cancer. He says Island Health provided him access to the requested records, but BC Cancer refused access.² He also says he made a second request to Island Health, and they provided access to additional responsive records.³

[5] The applicant suggests the reason the PHSA refused his request while Island Health did not is because it is inclined to refuse access, rather than out of any interest in protecting the privacy of the deceased.⁴

[6] I have not seen the applicant's requests to Island Health and cannot speak to its response to those requests. This inquiry is only about whether PHSA correctly applied FIPPA when it responded to the applicant's request for records from BC Cancer.

ISSUES AND BURDEN OF PROOF

[7] The issues I must decide in this inquiry are whether:

1. The applicant was acting on behalf of the deceased in accordance with s. 5(1)(b) and with s. 5 of the Regulation.
2. PHSA was required to refuse to disclose any information under s. 22(1).

[8] Section 57 does not state who has the onus for establishing that an applicant is authorized to act on behalf of another person. In such cases, both parties are responsible for providing argument and evidence to support their positions.⁵

² Applicant's submission at para 18.

³ Applicant's submission at para 19.

⁴ Applicant's submission at para 20.

⁵ Order F24-05, 2024 BCIPC 97 at para 9; Order F18-08, 2018 BCIPC 10 (CanLII) at para 7; and Order F07-10, 2007 CanLII 30395 (BC IPC) at paras 10-11.

[9] Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue in the records would not be an unreasonable invasion of a third party's personal privacy. However, PHSA has the initial burden of proving the information is personal information.⁶

DISCUSSION

Background

[10] The applicant is the executor of a deceased's estate.⁷ The deceased became ill not long after being vaccinated. She died less than six months after receiving the first of two vaccinations.⁸

[11] At the time he made the access request, the applicant stated his reason was to discover if her death was related to an AEFI or AESI.⁹ AEFI means "Adverse Events Following Inoculation" which are events having a temporal association with a vaccine and which cannot be clearly attributed to other causes.¹⁰ AESI means "Adverse Events of Special Interest" which are events having the potential to be causally associated with a vaccine product.¹¹

[12] The Public Health Agency of Canada has a Vaccine Injury Support Program (Program). The Program provides compensation to eligible individuals who have experienced a serious and permanent injury following vaccination. A causal relationship between receipt of a vaccine(s) and an AEFI does not need to be proven. Further, the Program provides financial support to dependents of an individual who died after vaccination.¹²

Records at issue

[13] The records at issue total 46 pages and consist of documents related to the deceased's medical care, including reports and test results. PHSA is withholding the entirety of the 46 pages from the applicant.

⁶ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

⁷ Last Will and Testament attached to the applicant's submissions.

⁸ Applicant's submission at paras 6-9. These facts are not disputed by PHSA.

⁹ Applicant's access request dated September 13, 2023.

¹⁰ Applicant's submission at para 1.

¹¹ Applicant's submission at para 2.

¹² BC Centre for Disease Control manual, Communicable Disease Control Manual: Chapter 2: Immunization, Part 5 – Adverse Events Following Immunization found at [http://www.bccdc.ca/resource-gallery/Documents/Guidelines and Forms/Guidelines and Manuals/Epid/CD Manual/Chapter 2 - Imms/Part_5_AEFI.pdf](http://www.bccdc.ca/resource-gallery/Documents/Guidelines%20and%20Forms/Guidelines%20and%20Manuals/Epid/CD%20Manual/Chapter%20-%20Imms/Part_5_AEFI.pdf), referenced in Applicant's submission at para 3.

Acting on behalf of a deceased person, s. 5(1)(b)

[14] At issue in this inquiry is whether the applicant is authorized to make an access request on behalf of the deceased. FIPPA contains provisions regarding who can exercise a deceased individual's access to information rights. The relevant sections are s. 5(1)(b) of FIPPA and s. 5 of the Regulation.

[15] Section 5(1)(b) specifies how an applicant may make a request on behalf of another person:

How to make a request

5(1) To obtain access to a record, the applicant must make a written request that

...

(b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, ...

[16] Section 5 of the Regulation says that if an individual is deceased, an "appropriate person" may act for the deceased in relation to s. 5 of FIPPA. The Regulation defines "appropriate person" as follows:

5(1) In this section:

"appropriate person" means,

(a) in respect of a deceased adult, one of the following:

(i) a committee acting under section 24 of the *Patients Property Act* for the deceased;

(ii) if there is no committee acting for the deceased, the personal representative of the deceased;

(iii) if there is no committee acting for the deceased and no personal representative of the deceased, the nearest relative of the deceased.

[17] Previous OIPC orders establish a two-part test for an applicant to exercise a deceased person's access rights under FIPPA. First, the applicant must be the appropriate person under s. 5(1)(a) of the Regulation. Second, they must have made the request "on behalf of" the deceased.¹³

¹³ Order F18-08, 2018 BCIPC 10 (CanLII) at para 7 and Order F22-42, 2022 BCIPC 47 (CanLII) at para 16.

[18] If the two-part test for exercising a deceased’s access rights is not met, then an access request is treated as an ordinary, arm’s length third party request.¹⁴ I turn now to the application of the two-part test to this access request.

1. Appropriate person

[19] Section 5(1) of the Regulation provides that where there is no committee acting for the deceased under the *Patients Property Act*, then the appropriate person is a “personal representative”. I have no evidence or argument before me to suggest the deceased had a committee. I find she did not have a committee.

[20] FIPPA does not define “personal representative”; given this, I will apply the meaning of that term found in the *Interpretation Act*.¹⁵ The *Interpretation Act* says that the term “personal representative” includes an executor of a will and an administrator with or without will annexed of an estate.¹⁶

[21] The applicant provided a copy of the deceased’s will as part of his inquiry submission. I can see that the will names the applicant as executor of the deceased’s estate. PHSA does not dispute that, as the executor of the deceased’s estate, the applicant meets the definition of the deceased’s “personal representative” and therefore comes within the category of appropriate persons under the Regulation.¹⁷

[22] For these reasons, I find that the applicant was an “appropriate person” to make an access request on behalf of the deceased.

2. Acting on behalf of

[23] FIPPA does not define what it means to “act on behalf of” another individual. Past orders have interpreted this term to mean acting to benefit the other individual, to further the other individual’s own goals or objectives, and acting in the other individual’s best interest.¹⁸

[24] Previous OIPC orders also say that a personal motivation or desire for closure or to understand or make sense of a deceased person’s medical history

¹⁴ Order F23-92, 2023 BCIPC 108 (CanLII) at para 27.

¹⁵ RSBC 1996, c. 238.

¹⁶ *Ibid.* at s. 29.

¹⁷ PHSA’s initial submissions at para 19.

¹⁸ Order F24-22, 2024 BCIPC 28 at para 19; Order F24-05, 2024 BCIPC 7 (CanLII) at para 27, Order F18-08, 2018 BCIPC 10 (CanLII) at paras 12-13 relying on Order F17-04, 2017 BCIPC 4 (CanLII) at para 17.

or treatments prior to death is insufficient to show an applicant is “acting on behalf of” the deceased.¹⁹

Parties’ submissions – acting on behalf of

[25] PHSA’s position is that the applicant was not acting on behalf of the deceased when making his access request. PHSA says a desire to understand, make sense of, or explore the medical care received does not meet the second element of the test for accessing a deceased’s medical records.²⁰ PHSA says that OIPC adjudicators have consistently found such requests were brought on an applicant’s own behalf.²¹

[26] The applicant says that as the executor of the deceased’s estate, it is his obligation to take inventory and estimate the value of all assets relevant to that estate.²² He identifies the potential for compensation to the estate if the deceased suffered a compensable vaccine injury.²³

[27] To support his position, the applicant relies on the deceased’s will. He attached a copy of the will to his submissions. I can see that this copy is stamped as filed in the Victoria Registry of the BC Supreme Court. The applicant says the will demonstrates that the deceased authorized him, as her executor, “to look into circumstances that may give rise to assets of the Estate.”²⁴

[28] The applicant says that fulfilling the deceased’s request to investigate includes obtaining medical records that may have a bearing on whether the deceased suffered a compensable vaccine injury.²⁵

[29] In reply, PHSA says that any potential compensation would benefit the beneficiaries of the estate, not the deceased. PHSA argues therefore that “[i]t therefore cannot be said that the Applicant is acting on behalf of the Deceased in seeking such compensation.”²⁶

¹⁹ Order F24-22, 2024 BCIPC 28 at para 19; Order F24-05, 2024 BCIPC 7 (CanLII) at para 35; Order F23-80, 2023 BCIPC 96 (CanLII) at paras 13-16; Order F22-42, 2022 BCIPC 47 (CanLII) at paras 27-29; and Order F02-44, 2002 CanLII 42478 (BC IPC).

²⁰ PHSA’s reply submission at p. 2.

²¹ PHSA’s initial submission at paras 23-24. PHSA cites the following orders: Order F02-44, 2002 CanLII 42478 (BC IPC), Order F24-05, 2024 BCIPC 7 (CanLII), Order F23-80, 2023 BCIPC 96 (CanLII), Order F22-42, 2022 BCIPC 47 (CanLII), and Order F24-22, 2024 BCIPC 28 (CanLII).

²² Applicant’s submission at para 11.

²³ Applicant’s submission at para 12.

²⁴ Applicant’s submission at para 13.

²⁵ *Ibid.*

²⁶ PHSA’s reply submission at p. 2.

Analysis – s. 5

[30] The parties do not disagree about the underlying reason for the access request. The applicant believes that, as an executor, he is duty bound to pursue the potential for compensation for death resulting from vaccination. PHSA's position is that such a request is not acting on behalf of the deceased.

[31] I understand PHSA's position to be that the request was not made on behalf of the deceased either because it was made on the applicant's own behalf or on behalf of the beneficiaries of the estate. However, for the reasons that follow, I do not agree, and I find that the applicant was acting on behalf of the deceased in making the access request.

On behalf of the applicant

[32] PHSA argues that this access request is similar to previous access requests which it says OIPC adjudicators have consistently found were brought on the applicant's own behalf.²⁷

[33] The previous orders relied upon by PHSA clearly delineate the many different circumstances in which a person is *not* acting on behalf of a deceased person. They do not, however, provide much guidance for when a person *is* acting on behalf of a deceased person. The consistent theme in these previous orders, in my view, is the element of the applicant's self interest. Generally speaking, that self interest is well intentioned but is still self interest, rather than being motivated by the interests of the deceased.

[34] I cannot see, and PHSA does not say, what the applicant's self-interest might be in this case. The applicant is not a named beneficiary in the will, nor does he express a desire to understand, make sense of, or explore the medical care received for personal or emotional reasons related coming to terms with the death. In my view, the applicant is simply fulfilling his duties as the executor of the estate, which is not a matter of self interest.

[35] As noted above, an "executor" passes the first part of the test of whether or not an access applicant is "acting on behalf of" the deceased. Simply being the executor is not however, sufficient to meet the second element of the test. In this case, the applicant, as the executor, is standing in the place of the deceased. He seeks to actualize a "benefit" to the deceased.²⁸

[36] An executor, appointed in a will, has the responsibility to manage and settle a deceased person's estate, ensuring their wishes are carried out. In my

²⁷ PHSA's initial submission at para 23.

²⁸ Order F03-07, 2003 CanLII 49171 (BC IPC) at para 16.

view, carrying out the express wishes of the deceased is “acting on behalf of” the deceased.

[37] There is no speculative element about the intent of the deceased. Her intent is clearly spelled out in her will.²⁹ She directed her executor to gather and realize all of her assets and ultimately distribute them to the named beneficiaries of her estate.

[38] The applicant has convinced me that there is a potential asset of the estate in a claim arising from vaccine injury. There is no dispute between the parties about the short timeline between vaccination and death. At minimum, therefore, there is a temporal connection between the two. If a claim is successful, any compensation recovered becomes an asset of the estate.

[39] The applicant outlines the Program as the most economical means of seeking compensation for vaccine injury.³⁰ In my view, requesting access to the deceased’s medical records is a logical first step in making a claim to realize this potential asset.

[40] I cannot see, and PHSA does not say, what the applicant’s self interest might be in this case. I do not agree that the applicant was acting on his own behalf in requesting access to the deceased’s medical records.

On behalf of the beneficiaries

[41] PHSA also says that any potential compensation realized in this matter would only benefit the beneficiaries of the estate, not the deceased. Clearly a deceased individual cannot directly experience any financial gain or loss from their own estate.

[42] I cannot conceive of any benefit that could accrue to a person who is deceased by virtue of the very fact of their death. Section 5 does not however, say “acting for the benefit of”, it says “acting on behalf of”.

[43] I cannot see, and PHSA does not say, how acting for the benefit of the beneficiaries means the applicant was therefore not acting on behalf of the deceased. In my view, the wishes of the deceased are expressly outlined in her will.

[44] In the will, the deceased expressed her wish that all assets claimable by her estate be gathered and dispersed to the beneficiaries. The applicant, in seeking to realize such a potential asset, was working to fulfil those wishes and was therefore acting on behalf of the deceased.

²⁹ Item 12 in the Will.

³⁰ Applicant’s submission at para 14.

Conclusion, s. 5(1)(b)

[45] I find that what the applicant has said about why he made the access request is sufficient to establish that the request was made to further the wishes of the deceased to realize the assets of her estate. I find that the applicant is an appropriate person who was acting on behalf of the deceased in making the access request as required by s. 5(1)(b).

Disclosure harmful to personal privacy, s. 22

[46] Previous orders have said that where an applicant is not truly acting “on behalf” of an individual, the FIPPA access request is to be treated as an ordinary, arm’s-length request by one individual (here, the applicant) for another’s (here, the deceased’s) personal information.³¹ PHSA says that the applicant was not acting on behalf of the deceased, so it is required by s. 22 to withhold those records.

[47] Since I have found the applicant was acting on behalf of the deceased, the applicant is entitled access to the same information as the deceased, and I need not consider whether disclosure to the applicant might unreasonably invade her personal privacy. There is, however, information in the records that identifies other individuals who are named.

[48] PHSA’s submissions on s. 22 are only about the deceased’s privacy. For this reason, PHSA has not met its burden of establishing that any information in the records is the personal information of any identifiable individual other than the deceased.³² As s. 22 is a mandatory exception to disclosure, I nevertheless considered whether it requires PHSA to withhold any information in the records.

[49] Section 22 is about protecting third parties from an unreasonable invasion of their privacy from an unauthorized disclosure of their personal information. Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.³³

[50] Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information in dispute is personal information.

³¹ Order 00-40, 2000 CanLII 14405 (BC IPC) at p. 8.

³² PHSA, at paragraph 33 of its initial submission acknowledges that it bears an initial burden of demonstrating that the information withheld under section 22(1) of the Act constitutes “personal information”.

³³ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58 sets out a summary of the steps in a s. 22 analysis which I follow here.

Personal information

[51] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.” Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”³⁴ Whether information is “contact information” depends upon the context in which it appears.³⁵

[52] PHSA says that all of the information contained in the records is about the deceased’s medical history, specifically and primarily related to her diagnosis and treatment.³⁶ As such, it says the information is her personal information.

[53] From my review of the records, I can see that all the withheld information is, on its face, about the deceased who is identified by name in the records. It is, therefore, her personal information. I can also see the names of identifiable individuals who interacted with the deceased in providing diagnosis, testing, and treatment. I find these names were not provided to enable these individuals to be contacted at a place of business, so it is not contact information. As a result, I find the names, treatment provided by them, and results reported by them is their personal information.

[54] I find the personal information of these other individuals in the medical records is intertwined with the personal information of the deceased. For example, reports of the treatment provided by identifiable individuals to the deceased reveal what type of treatment she received. I find that this information is simultaneously the personal information of the deceased and of those other third parties.

Not an unreasonable invasion of privacy, s. 22(4)

[55] The next step in a s. 22 analysis is to assess whether the personal information falls into any of the types of information listed in s. 22(4). If so, then its disclosure is not an unreasonable invasion of personal privacy.

Third party consent, s. 22(4)(a)

[56] The applicant raises s. 22(4)(a) when he says that disclosure of the records is not an unreasonable invasion of the deceased’s privacy. Section 22(4)(a) says that disclosure of personal information is not an unreasonable

³⁴ FIPPA, Schedule 1.

³⁵ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

³⁶ PHSA’s initial submission at para 36.

invasion of a third party's personal privacy if the third party has, in writing, consented to or requested the disclosure.

[57] I have found above that the applicant is authorized to act on behalf of the deceased, so I need not consider the violation of her privacy. I have no evidence before me that the other identifiable individuals gave their consent, so I find s. 22(4)(a) does not apply.

Public body employee's position, functions or remuneration –
s. 22(4)(e)

[58] Section 22(4)(e) says that it is not an unreasonable invasion of a third party's personal privacy to disclose information about their position, functions or remuneration as an officer, employee or member of a public body.

[59] It is well established that s. 22(4)(e) applies to "objective, factual statements about what the third party said or did in the normal course of discharging [their] job duties, but not qualitative assessments of those actions."³⁷

[60] I am satisfied from the context and content of the records that the individuals identified in the records are public body employees. I am further satisfied that their names, titles, and the details they report about the deceased's diagnosis, testing, and treatment appear in the normal course of discharging their job duties such that s. 22(4)(e) applies. I find s. 22(4)(e) applies to all of that personal information.

[61] For these reasons, I find disclosure of the third party personal information is not an unreasonable invasion of their personal privacy.

Conclusion

[62] For the reasons above, I make the following order under s. 58 of FIPPA:

1. I require PHSA to disclose the requested records to the applicant who is acting on behalf of the deceased.
2. I confirm PHSA is not required by s. 22 (1) to withhold any information in the records.
3. PHSA must concurrently copy the OIPC registrar of inquiries on its cover letter disclosing the records to the applicant.

³⁷ Order 01-53, 2001 CanLII 21607 (BCIPC) at para 40.

[63] Pursuant to s. 59(1) of FIPPA, PHSA is required to comply with this order by August 27, 2025.

July 15, 2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No. F23-94771